

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. DAVIS,

Plaintiff,

No. CIV S-04-1390 LKK EFB P

vs.

TERESA SCHWARTZ, et al.,

Defendants.

ORDER

Plaintiff is a prisoner without counsel suing for alleged civil rights violations. *See* 42 U.S.C. § 1983. On November 8, 2006, plaintiff filed a motion to compel discovery. For the reasons explained below, the motion is denied.

The court may modify a schedule only upon a showing of good cause. *See* Fed. R. Civ. P. 16(b). Good cause exists when the moving party demonstrates he cannot meet the deadline despite exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). The schedule issued on July 28, 2006, ordered the parties to complete discovery, including filing any motions to compel, no later than October 27, 2006. On September 30, 2006, the court granted defendant Schwartz a 30-day extension of time to respond to plaintiff's first set of interrogatories. Plaintiff did not seek a corresponding extension of the discovery cutoff date.

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1 Instead, plaintiff filed his motion to compel on November 8, 2006, well after the close of
2 discovery. Moreover, plaintiff has not attached defendant's answers to his interrogatories. This
3 omission not only prevents the court from determining whether good cause exists that justifies
4 modifying the schedule, but also prevents the court from addressing the merits of the motion if
5 such cause exists. *See* L. R. 33-250(c). Plaintiff's motion is late and in any event cannot be
6 resolved in its present form.

7 Accordingly, it is ORDERED that plaintiff's November 8, 2006, motion to compel is
8 denied.

9 Dated: December 26, 2006.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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